

Vanbuckley et al v. City of New York et al
1:09-cv-03083-ERK-MDG

This order addresses the defendants' motion to stay the action [8]. Notwithstanding the agreement of both sides that this action should be stayed indefinitely pending completion of the Civilian Complaint Review Board ("CCRB") investigation, this Court is not satisfied on the showing made that any stay is warranted. This Court agrees with defendants that a considered determination by the City of New York Law Department regarding representation of the individual defendants in this action is critical at this juncture since the potential for "a conflict of interest is inherent in Section 1983 cases." Patterson v. Balsamico, 440 F.3d 104, 114 (2d Cir. 2006). However, no showing has been made that the information necessary for such a determination is exclusively within the control of the CCRB. The CCRB is an independent board vested with the "power to receive, investigate, hear, [and] make findings" upon complaints of police misconduct against members of the New York City Police Department ("NYPD"). New York City Charter § 440(c)(1). Since the CCRB is authorized only to submit recommendations to the NYPD's Police Commissioner, id., its findings are not conclusive. In fact, in many other cases brought under section 1983, the Law Department has decided the question of representation prior to completion of a CCRB investigation. In any event, there may be discovery that could now be conducted without prejudicing the defendants who have not yet appeared, including documentary discovery on damages and discovery of information contained in records held by the New York Police Department. Finally, insofar as defendants are suggesting that a stay is warranted because the investigation of the CCRB is protected by the law enforcement privilege, they have not made showing required by *King v. Conde*, 121 F.R.D. 180, 189-190 (E.D.N.Y. 1988), let alone shown that this independent vilian agency is entitled to such a privilege.

Thus, the motion is denied without prejudice.